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Supreme Court U.S.
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No. 98-415

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

Seacoast Motors of Salisbury, Inc.,

Petitioner,

v.

Chrysler Corporation,

Respondent.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

SUPPLEMENTAL BRIEF OF THE PETITIONER (TO BE PRINTED)

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SUPPLEMENTAL BRIEF OF THE PETITIONER

Petitioner submits this Supplemental Brief in light of a further development in a related matter: the October 7, 1998 argument in No. 97-889, *Wright v. Universal Maritime Service Corporation*.

In this case, No. 98-415, the district court dismissed Petitioner's complaint pending arbitration. Petitioner appealed. The First Circuit, however, dismissed the appeal on the ground that it lacks jurisdiction under either 9 USC 16 or 28 USC 1291. Petitioner then sought review in this Court, presenting the question whether a federal court of appeals has jurisdiction to hear an immediate appeal of the dismissal of a plaintiff's complaint pending arbitration.

Although the parties have not raised or briefed the issue, the same question also is presented in another case in which this Court already has granted certiorari, received the merits briefs, and heard oral argument. No. 97-889, *Wright v. Universal Maritime Service Corporation* presents the question whether the general arbitration clause in a collective bargaining agreement encompasses claims under the federal anti-discrimination laws. But the jurisdiction of the Fourth Circuit over the *Wright* Petitioner's appeal is open to question. Just as in this case, the district court in *Wright* dismissed the Petitioner's complaint pending arbitration. The Petitioner then appealed the dismissal to the Fourth Circuit.

In this Court, neither the *Wright* Petitioner nor Respondent briefed the Fourth Circuit's jurisdiction over the Petitioner's appeal. Nor (we are advised) did they or the Court raise the question at the October 7, 1998 oral argument. But because the issue nonetheless goes to the subject matter jurisdiction of the court of appeals (and therefore of this Court), it must be resolved before the Court may reach the merits in *Wright*. *See Mount Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 278-79 (1977).

Because the briefing and argument in *Wright* already are concluded, our view is that the Court ought to grant certiorari in this case to resolve the jurisdictional issue. The question presented is difficult, close and frequently recurring, as demonstrated by the resulting five-to-three split in the circuits. *See generally* Reply Br., No. 98-189, *De Carbon v. GMC*. We recognize that the Court recently denied certiorari in related matters presenting this question. No. 97-1895, *McCarthy v. Providential Corp.*; No. 98-189, *DeCarbon v. GMC*; and No. 98-297, *Napleton v. GMC*. But when the Court considered those Petitions, it was not aware that the issue would have to be resolved in *Wright*. If the Court disagrees with our recommendation, and elects instead to resolve the question in *Wright*, we ask that the Petition in this case be held pending the disposition of *Wright*.

Respectfully submitted,

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